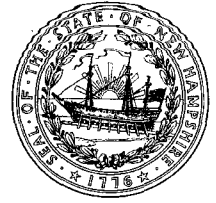




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

**LETTER OF DEFICIENCY
WET 06-085**

August 17, 2006

David Calkins
PO Box 544
Franklin, NH 03235

RE: File # 2006-1016, Kelly Road, Franklin

Dear Mr. Calkins:

On April 26, 2006, May 17, 2006, and July 25, 2006 DES personnel from the Department of Environmental Services ("DES") conducted inspections of the above referenced property, more specifically referenced on the Town of Franklin Tax Map 138 as Lot 12 (the "Property"). The purpose of the inspection was to determine compliance with RSA 482-A and NH Code of Admin. Rules Wt 100-800 and monitor the conditions of the site.

During the inspections the following observations were documented:

1. A ditch, approximately 250' in length, had been dug at the back of the Property to direct water flowing from an underground channel off of an abutting property (Tax Map 138 Lot 402). The ditch was highly unstable and was directing water toward a perennial stream located at the southwest corner of the property. The most recent inspection indicated that stones had been placed in the ditch, possibly in response to DES's request for check dams, but the dams had washed out and the ditch remained unstable.
2. Sedimentation resulting from erosion of the ditch was traced for 300' downstream. Sediment in the stream was 1' deep in areas.
3. Approximately 500 sq ft of wetlands adjacent to the ditch had been disturbed by creation of the ditch and re-grading of soils. Exposed soils were seeded and mulched in response to requests made by DES, and the area is currently vegetatively stable.
4. Approximately 15' along both banks of the perennial stream channel had been rutted by motor vehicle passage. The banks were unstable and bare soils uphill were eroding down to the perennial stream. In response to DES's requests, the exposed areas had been seeded and vegetation had taken hold.

5. At the northwest corner of the Property, along Kelly Road, a ditch had been dug in approximately 300 sq ft of wetland. The ditch has remained unstable.
6. Along the north side of Kelly Road, a roadside ditch had been dug and left unstable. The ditch was eroding and directing sediment down to the perennial stream at the Kelly Road culvert crossing. The ditch has remained unstable.
7. On Tax Map 138 Lot 2, boulders/large rocks had been placed along approximately 55' of the western bank of the perennial stream, just below the culvert outlet, but the width of the stream channel was not altered. Vegetation further stabilized the bank.
8. Adjacent to the work on the bank, soils had been graded and left exposed, resulting in erosion along approximately 40' of the stream channel. In response to requests made by DES, actions were taken to stabilize the exposed soils and install erosion controls. The erosion of the road and ditches has continued to be an issue, clogging erosion controls and suffocating recently vegetated areas.

During the inspections you informed DES that you were responsible for the ditch work along Kelly Road and on your property, as well as for the work along the bank of the perennial stream, below the Kelly Road culvert outlet. DES acknowledges your efforts to improve the issues at hand and believes you are willing to continue to work toward compliance.

In response, you are requested to take the following actions:

1. **Immediately** retain a certified erosion control specialist or other professional having experience with stormwater control to oversee the development and implementation of an Erosion and Sediment Control Plan.
2. **Within 7 days** of receiving this LOD have the retained professional contact Stacey Herbold, Wetlands Compliance Specialist, at (603) 271-4062 to verify they have been retained as requested in #1.
3. **Within 30 days** of receipt of this Letter of Deficiency, submit an Erosion and Sediment Control Plan designed by the retained professional to DES for review and approval. The plan should specifically address the control of flow, soil erosion, and sedimentation associated with the ditch on the Property and Kelly Road. The plan should also address the removal of sediment from the perennial stream and restoration of wetlands at the northwest corner of the Property.

Submit the following with the Restoration Plan:

- a. A plan with dimensions, drawn to scale, showing:
 - i. Existing conditions;

- ii. Proposed conditions after implementing the Erosion and Sediment Control plan;
 - iii. Cross-sections of structural stormwater management and erosion and sediment controls. (Note* The Restoration Plans should be in accordance with Best Management Practices in the "Stormwater Management and Erosion and Sediment Control Handbook for Urban Developing Areas in New Hampshire", prepared by the Rockingham County Conservation District.)
- b. A detailed description of the Best Management Practices to be used to control erosion and sediment;
 - c. A detailed description of the method for restoring wetlands and removing sediment from the perennial stream by hand;
 - d. A detailed description of the proposed planting plan for the stabilization and revegetation of restoration areas and control of invasive species such as purple loosestrife (*Lythrum salicaria*) and common reed (*Phragmites australis*);
 - e. A description of the proposed construction sequence and an anticipated compliance date (to be before the end of the 2006 growing season).
 - f. A description of the method of documenting success of the project. This should include at least one monitoring report by the end of the first growing season.
- 4. Implement the Erosion and Sediment Control plan only after receiving written approval and as conditioned by DES.
 - 5. Issuance of this LOD and approval of plans by DES does not convey any property rights; therefore permission must be sought before conducting work on any property not under your ownership.

RSA 482-A, the New Hampshire Wetlands Law, was enacted to protect and preserve wetlands and surface waters from unregulated despoliation. Prior to dredging, filling, or construction in and adjacent to wetlands or surface waters, an individual is required to obtain a permit. If work is done without a permit, this is considered a violation of RSA 482-A. Failure to respond to this Letter of Deficiency in a timely and complete manner may be construed as noncompliance by the receiving party.

DES personnel may conduct another inspection at a later date to determine whether you have come into and are maintaining full compliance with the applicable statute and rules.

Issuance of this letter shall not preclude further enforcement by DES. Failure to comply with RSA 482-A will result in enforcement by DES, including but not limited to the issuance of fines, administrative orders, or referral to the New Hampshire Office of the Attorney General for prosecution of civil or criminal penalties. If an order is issued to you, it may also be recorded with the Registry of Deeds as an encumbrance against your property.

All documents submitted in response to this Letter of Deficiency should be addressed as follows:

Stacey Herbold, Compliance Specialist
Wetlands Bureau
Department of Environmental Services
29 Hazen Drive PO Box 95
Concord, NH 03302-0095

Should you have any questions regarding this letter, or wish to arrange a meeting, please contact Stacey Herbold at (603) 271-4062.

Sincerely,



Collis G. Adams, CWS
Administrator
Wetlands Bureau

CERTIFIED MAIL 7006 0100 0005 8153 6068

cc: Rene Pelletier, Manager, Land Resources Management Program
Gretchen R. Hamel, Administrator, DES Legal Unit
Franklin Conservation Commission
Franklin Board of Selectmen
Michael Major & Patricia Niswander
USACOE